

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF LOUISIANA

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 IN RE: VIOXX PRODUCTS \* MDL No. 1657  
 LIABILITY LITIGATION \* SECTION "L"  
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 \* NEW ORLEANS, LOUISIANA  
 \* July 17, 2008  
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TRANSCRIPT OF THE MONTHLY STATUS CONFERENCE  
HEARD BEFORE THE HONORABLE ELDON E. FALLON  
UNITED STATES DISTRICT JUDGE

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1 P R O C E E D I N G S  
2 (July 17, 2008)

3 (Opening of Court.)

4 THE COURT: Be seated, please. Good morning, ladies  
5 and gentlemen.

6 THE DEPUTY CLERK: MDL Number 1657, in re Vioxx.

7 MR. HERMAN: Yes, Your Honor. May it please the  
8 Court, Russ Herman for plaintiff.

9 MR. WITTMAN: Good morning, Your Honor, Phil Wittman  
10 for Merck.

11 THE COURT: We're here today for our monthly status  
12 conference. I've met with the committees in chambers. I  
13 discussed with them the proposed agenda in addition to other  
14 matters, but we'll take them in the order presented.  
15 First, the Settlement Agreement.

16 MR. HERMAN: May it please the Court, the Settlement  
17 Agreement is being fully implemented, and the order that's filed  
18 by the Court and on Your Honor's website and on Brown Greer's  
19 website reflects all of the Pretrial Orders which have been  
20 issued by Your Honor since November 9, 2007. On May 15, 2008,  
21 the PSC filed a motion to suspend the date of Implementation of  
22 Pretrial Order 6(c). That motion was granted on May 21, 2008.  
23 I have nothing further other than to advise any folks who may be  
24 listening in that they can access Brown Greer's website, Brown  
25 Greer.com/Vioxx Settlement, and this Honorable's Court website

1 as noted on the first page of the Status Report Number 37,  
2 viox.x.laed.uscourts.gov. The only other issue is an issue which  
3 we've covered at the last meeting. And on June 30th an attorney  
4 by the name of Ron Benjamin of counsel of certain plaintiff's  
5 filed a motion to Vacate or Modify Pretrial Order Number 28.  
6 Merck and the PFC, PNC will be opposing that motion when Your  
7 Honor sets a schedule.

8 THE COURT: Okay.

9 MR. WITTMAN: I think that leaves us with just a  
10 report from the Claim Administrator, which would probably be  
11 appropriate at this time, Your Honor.

12 THE COURT: All right. Lets hear from the claims  
13 administrator.

14 MR. BROWN: Good morning, Your Honor, I'm Orran Brown  
15 and with me today also is Lynn Greer. We are from Brown Greer  
16 in Richmond, and we are the claims administrator under the  
17 Settlement Agreement. And what we'd like to do today, Your  
18 Honor, is what we have done on each occasion in the last few  
19 months is give the Court and the parties a status update on  
20 where we are on the Settlement Agreement on it's three main  
21 phases: First, registration, then enrollment, and now what  
22 we're really moving into, and will be for some time now, the  
23 claims evaluation, claims filing and evaluation process.

24 So, we will go quickly through the first few stages and  
25 report to the Court where we stand on those.

1           This is a slide we've seen many times now. It shows us the  
2 number of folks who have registered as the first step in the  
3 process. We are now up to this 59,252 number of total number of  
4 people who have submitted themselves for registration. And that  
5 number does creep up some still each day. We had the January 15  
6 deadline as the original requirement, but we're still receiving  
7 information from counsel and occasionally a pro se claimant who  
8 want to still register. And in that row three it shows that  
9 number has increased by 58 people from the time we were here on  
10 June 27, the last report. Merck and its counsel have been  
11 working with the lawyers in their cases to try to secure  
12 compliance with the Court's registration order, and so we are  
13 still getting some efforts from counsel to go ahead and register  
14 to be in compliance with the order, which is why that number is  
15 still creeping up a little bit.

16           THE COURT: Also, I may say that the registration does  
17 not bind anyone to joining the program. Registration simply  
18 allows you to be counted in the census of all the claims. And  
19 so, anyone who has a claim against Vioxx, whether or not they  
20 choose to eventually join the program or not, I urge them to  
21 register because registration carries no commitment to join the  
22 program. It simply gives them -- makes them a part of the  
23 census, and so I urge everyone to register.

24           MR. BROWN: And that point, Your Honor, goes to row  
25 four there, because we have a lot of people who have registered

1 in compliance with the order who are not really eligible for the  
2 settlement program because there are a number of things that you  
3 have to be to be eligible to participate in the program, a  
4 lawsuit by November 9, 2007, for a Tolling Agreement party. You  
5 have to have an eligible injury. For the most part, you have to  
6 be a U.S. resident. And so there are certain factors about some  
7 of those folks that they're not really eligible to participate  
8 and file claims in the program, but nonetheless, they had to  
9 register.

10 And we've been working with Merck and it's counsel and  
11 advisors to try to get a little more precise about, of the  
12 population that we've seen, who is not really eligible based on  
13 the information that they have from the litigation, based on the  
14 information that counsel have given us. And as of yesterday, we  
15 take out of that 59,252 a number of people who are really not  
16 eligible for the program. We get down to a truer number of this  
17 49,960 claimants that we have heard from, who are registered,  
18 who seem to be eligible for the program.

19 The next stage, Your Honor, is the enrollment phase that  
20 the Court mention. This is where you really sign up for program  
21 beyond the census that's represented in the registration stage.  
22 These are our current numbers on row five. We see a number of  
23 48,550 claimants who are enrolled now as of yesterday in the  
24 program. We have a total of 52,000 in row three, 52,096 who  
25 submitted materials, who did sign up, who did enroll for the

1 program. But here again, among that population there are  
2 claimants who have enrolled but are not truly eligible to  
3 participate. So, here also we've been working with Merck and  
4 its advisors to try to get to a more precise net number of  
5 claimants who really are enrolled and really should be enrolled  
6 in the program because they're eligible to participate in it.  
7 And as we see in row five, the number of 48,550 is going up  
8 every day as people still enroll with us. And since our last  
9 report on June 27, that number has increased there by, you see,  
10 1661 claimants. So, that number has gone up as has the  
11 percentage shown in row six.

12 We're now as of yesterday at the point where, if we look at  
13 the number of people in row five who have enrolled and compare  
14 it with the number of people we saw on the previous slide of  
15 49,960, who seem to be eligible for the program at all, we're at  
16 the stage now where we're just a tad over 97 percent of the  
17 eligible population has enrolled in the settlement program.

18 We've been working here with Merck on this issue as well  
19 because we're trying -- have been working to identify the  
20 population of who is in that three percent. Who are the people  
21 who are not enrolled would appear to be eligible for program?  
22 And it looks as if the data shows us that about half of that  
23 three percent delcomb (phonetic) are people who cannot be  
24 located. There are claimants that law firms have represented  
25 but since the time that they began representing and claimants

1 have moved and not left the counsel with forwarding addresses,  
2 so law firm having trouble finding them. They've been working  
3 on finding them, but about half of that population of the three  
4 percent that's not enrolled, we think are people that cannot be  
5 found, and the law firms have told us they cannot be found.

6 We have been surveying all of the counsel who have folks  
7 that seem to be eligible, but haven't enrolled to find out why  
8 they haven't enrolled. And about half of that three percent  
9 difference of people they have not been able to locate, though  
10 they have been trying for some time.

11 If we take that number out and look at that group of about  
12 one and a half percent who may never enroll because they cannot  
13 be found, then you get to at a number of over 98 percent,  
14 actually around 98 and a half percent of the eligible population  
15 who is enrolled in the program. And that 98 1/2% of the people  
16 that are realistically eligible and can be found to enroll.

17 So, that's where we are as of yesterday looking at a  
18 percentage participation rate that is 97 percent. And then if  
19 you start looking at who really is ever going to be a program,  
20 as a practical matter it's about 98 1/2 percent level.

21 We also, Your Honor, as a final step a counsel's  
22 participation to enroll, they have to file a Certification of  
23 Final Enrollment. This is where we were now. It's suppose to  
24 be the last piece of paper that tells us that the firm is  
25 finished enrolling. And of all the claimants that we have are

1       trying to enroll, we have that now from just about all of the  
2       336 people. We still work with the firms that don't have the  
3       336 in. So, most of the firms have one or two claimants and we  
4       just have to get them on the program to give us that final  
5       piece of paper when they feel like they've finished enrolling  
6       their one or two plaintiffs.

7               The last thing, Your Honor, to mentioned about the  
8       enrollment process is something that we looked at last time as  
9       well. We used the same slide when we were here on June 27th,  
10      because at the same time that we're working on the claims that  
11      we've received that Lynn with talk about, we are working with  
12      the counsel who represent these claimants to get their  
13      enrollment papers in order because there is a set that we've  
14      worked out with the parties, the criteria about what it takes to  
15      be a valid release, what it takes to be a valid stipulation of  
16      dismissal or an authorization to release the medical records.  
17      And Merck's counsel is going through those documents and we are  
18      working with them to see if they meet the criteria. And we then  
19      take that information and we tell the law firms through their  
20      Vioxx portals -- they can sign up and see each their claimants  
21      -- whether the release or the stipulation or dismissal, or the  
22      other parts of the enrollment package for a particular claimant,  
23      or all their claimants have been reviewed, whether they are not  
24      deficient or clean, no current deficiencies, or whether there is  
25      a problem, and if so, what that problem is that they must

1 correct.

2 That process is underway or has been for some time, and is  
3 really active right now. We are sending these notices to  
4 confirm. For example, on the release side, we have told the  
5 holders of almost 24,000 of these releases that their documents  
6 are okay, that they are clean. They do not need to do anything  
7 else with them.

8 But that process is underway, will take some time yet to  
9 finish, but there are, for example, on a release the ones that  
10 we say that the poll firms are clean, they have all the pages  
11 there, they've all been signed by all the people that need to  
12 sign them, they've been signed in the right place. They have  
13 them altered into the text of release. The signatures have all  
14 been notarized and notarized properly, and the notary did his or  
15 her job correctly and signed it and dated it.

16 Those are the earmarks of binding and release under these  
17 completeness criteria, and that's what is happening now. The  
18 ones that don't fit those criteria are working firms to get them  
19 in shape. And a lot of the cures for those things are very  
20 easy. They just have to tell us to fill-in things. But, it is  
21 a process. It does involve work by us, by Merck's counsel, and  
22 by the firms to get it cleaned up.

23 And as I said last time, we are all committed to not let  
24 that process interfere with what is really next, and that is,  
25 the claim process, and so we prioritize. Among the people who

1 have submitted claim forms and are in the claims evaluation  
2 process, they are getting reviewed first here to get their  
3 paperwork in order so we don't end up having this issue impede  
4 payment during the time course for that.

5 Your Honor, that covers our enrollment registration phase.  
6 Unless the Court has any questions, I'll turn it over to Lynn to  
7 cover work.

8 THE COURT: You anticipate the payment is on track?

9 MR. BROWN: Yes, Your Honor, and Lynn can speak to  
10 that a little bit more, but yes, we think that we are on track  
11 to meet the target for the interim payment. And the goal of  
12 having that in August at some point, we think we're on track for  
13 that.

14 THE COURT: Thank you.

15 MR. MARVIN: Your Honor, if I may, Douglas Marvin for  
16 Merck. Before Lynn comes up to talk about the processing of the  
17 claims, on behalf Merck, I would like to say that with these  
18 numbers Merck is satisfied that the thresholds that are  
19 necessary to trigger funding of the program will be met. In  
20 fact, there appears to be an overwhelming endorsement of the  
21 program, as Orran has just indicated. 97 percent have now  
22 enrolled. When you back out those plaintiffs who cannot be  
23 found, the number rises to 98.5 percent.

24 Your Honor, under the agreement Merck had walk-away -- or  
25 has walk-away rights under the agreement. We will be waving

1 those rights as of August 4th. Upon the waiver of those rights  
2 that trigger the company's obligation to fund the program. And  
3 the first 500 Million Dollars will be deposited in the program  
4 on August 6. That will clear the way for interim payments to  
5 commence. And the parties have been working very hard with both  
6 Brown and Greer, Plaintiff's Steering Committee in working to  
7 achieve that objective. And, so, we do have every expectation  
8 that interim payments can commence in August.

9 One other point to note is that with the triggering of the  
10 funding of the program and the waiver of the walk-away rights,  
11 the enrollment period reopens for those who still may want to  
12 enroll, if we're down to that three percent. And that  
13 enrollment period will be open until, I believe, is October  
14 30th. But, we would encourage anyone who is thinking about the  
15 program to seriously consider it and enroll at the earliest  
16 opportunity so that the processing can be completed as quickly  
17 as possible.

18 THE COURT: Okay, well, that's good news.

19 Let me reflect back. The Court got this case on February  
20 16, 2005. The MDL opened and six cases were tried in this  
21 Court, as well as a number of cases in the State Courts. We've  
22 heard a lot of problems discussed with MDL's. The black whole  
23 phenomenon has been mentioned on numerous occasions, both by  
24 Courts as well as critics of the MDL process. But, this case  
25 seems to have worked very well. I think it's due in large part

1 to the work of the lawyers on both sides. Lawyers in this case  
2 are particularly skilled and hard working, and they brought  
3 about this process, and they need to know the Court appreciates  
4 this. The MDL worked very well and worked effectively, as I  
5 say, in large part because of the skill and hard work of the  
6 lawyers. The Court appreciates all that they have given to the  
7 case. So, I'm delighted to hear that it's filing down. It's  
8 also interesting that it's probably the biggest MDL that has  
9 come down the pipe. At least one of the biggest. This may not  
10 be -- one of the biggest. And it looks like the payment will be  
11 forthcoming, or at least the beginning or commencing within  
12 shortly after three years. And that again is a attribute to  
13 lawyers involved in this case, so I appreciate that.

14 I'm going to also mention that the State Judges worked with  
15 the MDL were very affective, and this Court appreciate all the  
16 work. Thank you very much.

17 MR. MARVIN: Thank you, Your Honor. I just would like  
18 to say that it has been a privilege working with the Plaintiff's  
19 Steering Committee and negotiating the plaintiff's committee in  
20 this matter for close to a year. A lot of work has been done  
21 and it's been done in a very professional way, certainly from  
22 our prospective, so we appreciate the cooperation and the hard  
23 work of both the PSC and the NPC.

24 THE COURT: I may also mention and observe that it's  
25 been my experience with lawyers, particularly skilled and

1 professional lawyers, that they work and fight very hard for  
2 their clients, and this has been the case in this particular  
3 case. The clients on both sides have been well represented by  
4 the lawyers. But during that course of time they also see each  
5 other, not only as advocates, but they begin seeing each other  
6 as people. And during the course of the MDL there are a lot of  
7 tragedies, illnesses and so forth on each side. I note that  
8 from talking with them that they each feel each others personal  
9 pain and discomfort that occurred over the years. But there are  
10 good times too. One of the good times, people go on and they  
11 get married, and that's one of the things that's happening  
12 shortly with one of our own, Russ Herman. Shortly, he will be  
13 married, and I know everybody joins me in wishing him well.

14 MR. HERMAN: Thank you, Your Honor. I do want to  
15 indicate that when you've got folks like Doug Marvin and his  
16 firm, and Phil Wittmann and his firm, and Ted Meyer and his  
17 firm, and John Biesner and his firm on the other side, as well  
18 as Mr. Beck and others, these are the most able counsel, defense  
19 counsel there are in the country. They've had more experience  
20 than other counsel an they play by the rules. We've been very  
21 fortunate to have a PNC and a PFC to oppose them. And the fact  
22 that the agreement was not only reached, but now any time you  
23 can get that many skilled lawyers representing Merck, and you've  
24 got 800 lawyers representing claimants, and 97 percent agree,  
25 you've got a pretty substantial settlement that on it's face is

1 fair. Because you can never reach this without, frankly, the  
2 oversight and direction of the Court and the Judges in  
3 California, Texas and New Jersey. We would have never gotten  
4 here without Court direction, hands-on pushing us. And the fact  
5 that both sides were combat-tested enabled us to research a  
6 settlement which was fair to both sides. And I think the  
7 success that we've had, and Merck's announcement today is  
8 testimony, not only to that, but to Brown Greer, that's done an  
9 exceptional job, to our Special Master who always has acted.  
10 And I speak for all of us in thanking all of them for making  
11 this a success. And we thank Your Honor for pushing us towards  
12 a conclusion that is going to benefit both Merck and the  
13 consumers that have claims.

14 And with that, I'll introduce Ms. Greer. I think again,  
15 Brown Greer has done an exceptional job.

16 MS. GREER: Good morning, Your Honor, Lynn Greer from  
17 Brown Greer. I'm going to speak about the next phase of the  
18 process which we are into, and it is the claims phase. This  
19 slide gives the Court a report on the claims packages that we  
20 received. There was a deadline of July 1st for claims package  
21 submission. And as of yesterday we have received claims  
22 materials for over 42,000 people.

23 The breakdown on this slide shows the status of where those  
24 packages are in our system. There have been 20,313, and an we  
25 have received them and we have coded them into our system.

1           And what that means is that, when the firms submits a  
2 package to us, it's an Adobe PDF file. We take that and our  
3 claims reviewers and intake staff mark that and link it to the  
4 claimant by document types. And we're able to see if the claims  
5 package is ready for us to review.

6           There have been 15,865 packages that we have received and  
7 marked as "received." They are in the process now of being  
8 coded. We have workers working around the clock to get those  
9 coded because it is the very first, a ver important step of our  
10 process and those numbers are dropping by the thousands every  
11 day as we make our way through that backlog.

12           From the 42,000 who have submitted information, 4,000  
13 people have submitted only a claims form, and that's okay. At  
14 least it gives us a chance to see what injuries they're claiming  
15 and to see that they are intending to submit claims packages.  
16 And a lot of claims packages continue to roll in, not in the  
17 numbers that surrounded the deadline, but we have heard from  
18 firms that they're still working on getting records to submit to  
19 us. And over 2000 folks have submitted information to us that  
20 is claims related, but it doesn't constitute a claims package.

21           So that may be a letter from the doctor, but it is not an  
22 event record or a pharmacy record. And we'll notify these firms  
23 and let them know what is deficient in their submissions. There  
24 have been over 780 firms who have submitted materials and we  
25 have received materials from 147 pro se claimants.

1           This next slide gives the Court just an overview of the  
2 volumes and timing of the submissions and materials. And you  
3 will see that over a third -- well, right at a third of the  
4 materials, the claim packages that we received, all came in the  
5 in the two-day period surrounding the deadline. So, prior to  
6 June 20th we received 26 percent of the total that we received  
7 today. In the nine days leading up to June 30th, we received 31  
8 percent. But, in that two-day period we received 33 percent.  
9 Since July 1st, we received another 10 percent of the volume.

10           So this speaks to Your Honor on the 15,000 claims packages  
11 that we are still coding. We are coding materials now that  
12 we've received on June 30th. So that shows you, that's where  
13 the volume came in, and that's what our staff is working on now.

14           Now, I would like to speak to just a few other things in  
15 the claims world. One is that this week we will be rolling out  
16 on the secure portal, a claims communication status report which  
17 will be very similar to the enrollment portal that firms have  
18 been accustomed to using. The one this will be is a way for  
19 firms to see the status of each of their claims through the  
20 claims process. It will tell if we've received their package.  
21 It will also be the vehicle by which we verify claimants of  
22 being eligible to perceive that they've passed the gates,  
23 notices of ineligibility, that they have failed the gates, and  
24 then eventually notices of points awards to eligible claimants.

25           I am pleased to report that we have ready to start issuing

1 notices of eligibility to several hundred claims this week.  
2 Those will be followed shortly by notices of ineligibility.  
3 Those notices gives claimants a chance to submit additional  
4 documentation that they realize when they get the notice of  
5 ineligibility, that they just failed to submit a record to us.  
6 If they do not submit any material, the claims will then go to  
7 Gate Committee for their review their review as they fail.

8 We do anticipate also, Your Honor, being able to start  
9 issuing notice of points award within the week, which will put  
10 us on track for, as we talked about before, being able to issue  
11 interim payments starting at the end of August. Thank you.

12 THE COURT: Thank you very much.

13 MR. BIRCHFIELD: Judge, Andy Birchfield with the  
14 Plaintiff Steering Committee. There is one point there that I  
15 feel is necessary to highlight for the lawyers.

16 As Ms. Greer pointed out, notices will be posted on the  
17 portal starting soon. And those notices are important.  
18 I mean, it's a notice of eligibility showing that the claimant  
19 has passed the gates and be followed by a points award notice  
20 that will provide detail about the key elements of the  
21 plaintiff's claim, and risk factors, the length of duration.  
22 And once those are posted on the portal that is notice to the  
23 lawyers, and so they need to review those notices, make sure  
24 that they are accurate, and as Ms. Greer pointed out, if there  
25 are corrections that need to be made, they need to act promptly

1 on that.

2 The secure portal will also be used to post notice of gate  
3 failures, so if a claim fails to meet certain criteria to  
4 participate in the settlement program and that is notice to the  
5 lawyers for their claimants, and they need to act promptly on  
6 those. If there are additional materials that need to be  
7 submitted, they need to do so immediately. The form will also  
8 have a provision on there, if you need additional time, you can  
9 check that and you can provide a basis for Brown Greer why you  
10 need additional time. You have 14 days.

11 You can also notify Brown Greer that this is all the  
12 evidence that we have, in which case you can indicate that and  
13 that claim will be processed at that point, and will go to the  
14 Gates Committee. So it is very, very important that lawyers pay  
15 careful attention to the notices on the portals because it does  
16 provide -- it provides the trigger for either submitting  
17 additional evidence or appealing the decision at that point.

18 THE COURT: Will they be able to determine at that  
19 point how much a claim is worth.

20 MR. BIRCHFIELD: Your Honor, once a claim is processed  
21 by Brown Greer and a determination is made that this claim meets  
22 the criteria for the settlement, then what Brown Greer will  
23 provide is a points award notice. And that will give the lawyer  
24 and the claimant the total number of points that is determined  
25 to be appropriate for that claimant. But, that does not equate

1 to a dollar value. What we are doing, the parties and Brown  
2 Greer are doing now is, we are evaluating the claims to make a  
3 points projection. And that will occur before the interim  
4 payments begin next month. So, at that point -- I mean, once  
5 you receive the points awards notice you will not know the  
6 precise dollar amount.

7 Now, as we describe the settlement process to the lawyers  
8 and claimants across the country at it's exception, we provided  
9 projections because we had -- we had done statistical analysis  
10 and we made projections of what we believe a point would be  
11 worth. And, so we have a points calculator that's available on  
12 the website so lawyers can go and see the range of that  
13 projection.

14 But once we, the parties and Brown Greer, have evaluated at  
15 least 2500 claims -- which will occur between now and August --  
16 then we will make a projection and then that will be provided to  
17 the claimants and that will be the basis for the interim  
18 payments. For those that have met the criteria they'll receive  
19 40 -- interim payments, 40 percent of the projected value of the  
20 claim. Thank you.

21 THE COURT: Thank you.

22 MR. WITTMAN: Your Honor, the next item on the agenda  
23 is the report from the lien administrator, Mr. Garrison. He's  
24 prepared to give that to the Court.

25 THE COURT: Okay, thank you.

1           MR. GARRETSON: Your Honor, I'm Mat Garrison with the  
2 Garrison Law Firm give a brief report today as a Lien Resolution  
3 Administrator.

4           With respect to Medicare, at our last hearing I reported to  
5 the Court that we had finalized a process with officials at  
6 Medicare. Further, I reported that the process at the time  
7 covered about 80 percent of the MI claimants that would  
8 matriculating through and eligible for interim payment. I  
9 mentioned we are working with a team at Medicare to resolve the  
10 remaining issues that would relate to a relatively few or minor  
11 group. And I'm pleased to report to you today that we've  
12 resolved all those outstanding issues with respect to those MI  
13 claimants.

14           Also, at the last hearing I reported that were working  
15 diligently with the Plaintiff Negotiating Committee on drafting  
16 the disclosure of this process to be included in the Medicare  
17 Entitled Claimants Points Notification. That disclosure is  
18 going to list the amount which will be deducted from each of  
19 these Medicare entitled claimant's award. It will also contain  
20 our recommendation and endorsement as the court-appointed Lien  
21 Resolution Administrator about this arrangement with Medicare.

22           And now with these remaining issues resolved for the  
23 Medicare entitled MI claimants, we are now working with the  
24 parties and the claims administrator to finalize a process by  
25 which these liens are deducted and the timing at which they're

1 deducted from the claimant's awards.

2 With respect to Medicaid, I've been reporting over the last  
3 several hearing about the status of the states who have  
4 responded and those who had accepted the propose voluntary  
5 protocols to affirmatively verify and satisfy Medicaid's  
6 interest in the most cost effective and uniform fashion.

7 At the last hearing I mentioned that we were still waiting  
8 on one state, Texas, to respond. The Court took notice of that  
9 issue and asked me to back with the name and contact  
10 information of those with whom we were dealing at Texas  
11 Medicaid. Fortuitously, before I left the courtroom last month,  
12 I received an email message from my office informing me that  
13 Texas had agreed verbally.

14 My understanding now is that they are working internally  
15 to get the signatures on that agreement so that we are good to  
16 go, and I do not expect any issue at this point, Your Honor.

17 THE COURT: I'm happy that Texas has come aboard. You  
18 know from their history they are independent and like to look at  
19 things most carefully. But, it's been my experience that when  
20 they do that and when they join, you can expect total commitment  
21 and cooperation from them.

22 MR. GARETTSON: Yes, Your Honor.

23 THE COURT: Whether it's the Alamo or Vioxx, they are  
24 vigorous in their support and in their commitment. And you can  
25 look for no better ally than to have Texas on your side, so I'm

1 delighted that they've joined.

2 MR. GARRETSON: Certainly, Your Honor. Further, with  
3 regards to Medicaid Nationwide, I should report that we continue  
4 to receive all the claims histories from the states, and are  
5 hoping that they will continue to come in at a good clip.

6 Finally, with respect to the other governmental liens such  
7 as VA, Tri-Care, and Department of Defense, we described that  
8 process at prior hearings. There is nothing new to report  
9 there, other than it's still moving smoothly.

10 So, in sum, Your Honor, I'm please to report that we appear  
11 to be completely synchronized with the parties and the Claims  
12 Administrator, and with these procedures and hold-back  
13 arrangements in place, from our prospective interim payments can  
14 now begin in a fashion that protects the interest of these  
15 federal and state programs.

16 THE COURT: Thank you very much. I appreciate all  
17 your work.

18 MR. WITTMAN: Your Honor, Special Master Juneau in  
19 court this morning. I don't know if he has a report to make at  
20 this point or not.

21 MR. JUNEAU: Very briefly.

22 Your Honor, I'd like to confirm what I addressed to you  
23 personally earlier. We had set for June 29 through the  
24 coordination of efforts of Brown Greer with the Special Master  
25 and Deputy Special Master. We are meeting with Brown Greer.

1 We're going to have a full training session. At the completion  
2 of that session there will be -- the goal is to -- we've had a  
3 uniformity and approach to the whole analysis of these claims.  
4 There will be one set protocol, one set policy, one set  
5 procedure, so that we'll have uniformity to all people involved  
6 in this program. That was the first go.

7 Additionally, after we've achieved that, the mechanical  
8 part of how we will do that from an efficiency standpoint  
9 because of the portals and so forth that have been established  
10 in this matter. We're going to get the input and training in  
11 that regard. The ultimate purpose, of course, is as I had  
12 indicated to the Court, that we want to be in a position, Your  
13 Honor, to be on schedule, on target with regard to the approval  
14 and payment of the claims as this Court has already articulated  
15 in all of its prior hearings.

16 As I see matters, Your Honor, we are on board to do that.  
17 I see no delay, no impediments to getting that done. I've  
18 coordinated that through the efforts of Justice Trotter and  
19 Judge Corodemus. They're all on board with the matter and we're  
20 all in sync in the matter. So, when the trigger gets ready to  
21 be pulled, I think we'll be on board to do that. Thank you.

22 THE COURT: Okay, I appreciate your report and I thank  
23 the other judges also for their help.

24 MR. WITTMAN: Your Honor, as to State Court trial  
25 settings, no cases are set for trial in the State Court through

1 September 30, 2008. On the class actions, the Court has under  
2 advisement Defendant's Rule 12, Motions to Dismiss the Master  
3 Complaints, the Medical Monitoring and Purchase Claims. And  
4 also has under advisement our Motion to Strike Class Allegations  
5 of Plaintiff's Medical Monitoring Master Class Action Complaint.  
6 Both matters have been fully briefed and we're waiting on an  
7 argument date from the Court.

8 THE COURT: Thank you. Any discovery directed to  
9 third parties?

10 MR. WITTMAN: I think Mr. Herman can handle that.

11 MR. HERMAN: Thank you, Phil.

12 May it please the Court. With respect to discovery, there  
13 are only two issues outstanding. The FDA did forward a CD of  
14 additional documents, revised their objections. We've got folks  
15 assigned to that. We're still going through it. We believe the  
16 FDA has been cooperative and thank Your Honor for Your Honor's  
17 directives, and we expect not to have a problem with the  
18 production of documents. There may be some issues related to  
19 the privilege law much farther down the road.

20 With respect to ESI, the last communication I received from  
21 ESI was yesterday. I have nothing to report at this time.  
22 Other than there are still some individuals who are not  
23 receiving the ESI materials, particularly as regard to  
24 pharmaceutical information necessary to be evaluated. The last  
25 such was on July 15, '08. I have undertaken to speak with their

1 representative as to that one individual, and hopefully we can  
2 resolve that issue.

3 Brown Greer has received on a more continuous basis  
4 information from ESI since the last status conference and  
5 hopefully we will not have to bring anymore of those issues to  
6 Your Honor.

7 THE COURT: There was also an issue with other  
8 claimants. Drew, you had some you had some problem with  
9 somebody not producing material last time. Do you have a report  
10 on that?

11 MR. RANIER: Yes, Your Honor. We had four plaintiffs,  
12 two in California, one in New York and one in Mississippi, and  
13 the Court of course issued its Rule to Show Cause why they  
14 should not produce those records. And we mailed those rules to  
15 all of those parties. And because of the Court's quick action  
16 we got all of the records.

17 THE COURT: I appreciate that.

18 MR. RANIER: So, those cases are in the record, and  
19 we're actually using the Court's order, fixing the Rule to Show  
20 Cause in other cases to speed up the record process. And that  
21 would apply to any claimants, any plaintiff in the country. So,  
22 we thank the Court for its prompt action, but it's also helped  
23 more than just those four cases.

24 THE COURT: Okay, I appreciate all of their  
25 cooperation also.

1           MR. HERMAN: Your Honor -- excuse me -- Your Honor,  
2 that order has been posted on the website and is available to  
3 all counsel.

4           With regard to the next item on the agenda, Merck's  
5 motions, I'm going to ask Mr. Wittmann to --

6           THE COURT: Well, we got something with state liaison.

7           MR. WITTMAN: Ms. Barrios.

8           MS. BARRIOS: Good morning, Your Honor, Dawn Barrios  
9 for the State Liaison Committee. Your Honor, today through CTO  
10 137 there are 744 remands pending before you. This number  
11 includes personal injury cases as well as cases regarding  
12 economic damages only. We have been in touch with Brown Greer  
13 to see if we can whittle the number down, comparing it to the  
14 claims that have already been submitted. And there have been  
15 incredibly gracious in doing that with us even during this  
16 turmoil process. And I'm happy to report that of all those  
17 states beginning with the letter "A" that we have almost  
18 98 percent -- 98 that have been resolved seemingly through the  
19 claims process. So we're working state by state with Brown  
20 Greer so that we can give you a realistic number of the actual  
21 remands before you.

22           I've already given the parties and your law clerk, Your  
23 Honor, spread sheets of the cases that are seeking economic  
24 damages only. There are two spreadsheets, one with the cases  
25 with pending remands and one with cases that do not have pending

1 remands that were just filed and will be heard in your court.

2 With regard to the cases with pending remands, pursuant to  
3 our conversations -- status conference last week regarding the  
4 Attorney General suits -- Mr. Seeger said I could give this  
5 report to the Court.

6 MR. SEEGER: (Nodded his head.)

7 MS. BARRIOS: That there are six states that we  
8 reported last Friday to you. Those states are Louisiana,  
9 Alaska, Montana, Mississippi, New York and Utah. All of those  
10 states, their Attorneys General have filed suits.

11 In reviewing the remand list again, Your Honor, I found  
12 another case that I thought should be included in that, and  
13 that's the case out of Colorado, where it's a private Attorney  
14 General suing for reimbursement of medicaid purchase prices on  
15 behalf of the Attorney General. The Attorney General would not  
16 bring a suit, so a private citizens did. So, with Your Honor,  
17 I've included Colorado in with the group of states that we're  
18 dealing with on the EG action.

19 We had a very productive conference call last week. I know  
20 one is scheduled next week to discuss the scope of discovery  
21 pursuant to Your Honor's request. And I'm pleased to say that  
22 I've invited all the attorneys for the Attorneys General to  
23 attend next month's status conference, and I think everyone  
24 will. I had an opportunity to meet with Mr. Seeger, Mr. Dugan  
25 and get the discovery issues fully flushed out and report back

1 to Your Honor.

2 THE COURT: Thank you.

3 MS. BARRIER: Thank you, Your Honor.

4 THE COURT: I met a week or two ago with  
5 representatives from Louisiana's Attorney General and also Ms.  
6 Barrios and several members of the plaintiff's committee to  
7 discuss those cases. And my thinking on those particular cases  
8 are that, one, that we ought to take the opportunity while  
9 they're here to see whether or not there are any common issues  
10 of discovery that needs to be handled. And, if so, it just  
11 makes sense to me to deal with them in an MDL setting. We'll  
12 get that out of the way first, and then after that's out of the  
13 way, if there be any other common matters. There may not be  
14 any. I assume there will be some issues that are common,  
15 motions that might even been common. And when that's out of the  
16 way then I can focus on the remand issues. But, it doesn't make  
17 sense to me to focus on the remand now. If there are any issues  
18 that would help those litigants that are common to all, they can  
19 all urge them at one time rather than doing them in 50 different  
20 states at 50 different occasions, so that's what we're doing.

21 MR. WITTMAN: Your Honor, as to Merck's motions, the  
22 only live motion is our Motion for Certification Note for  
23 Interlocutory Review of Your Honor's ruling in the Arnold and  
24 Gomez cases. That's been argued to the Court and there has been  
25 no change.

1 MR. LEVIN: Arnold Levin. That motion is pending the  
2 discovery that we're engaged in with the FDA.

3 THE COURT: Okay. Anything on the process?

4 MR. WITTMAN: The forum non conveniens motion, you're  
5 going to do reach later, I believe.

6 THE COURT: Yes, I will.

7 MR. WITTMAN: Okay.

8 THE COURT: The Pro se claimants, anything on that?

9 MR. HERMAN: I call on Mr. Johnston for his report  
10 Your Honor.

11 THE COURT: Okay.

12 MR. HERMAN: And then I have a response to a request  
13 for a portal access.

14 THE COURT: Okay.

15 MR. JOHNSTON: Bob Johnston, curator for the pro se  
16 plaintiffs. And I'll just briefly go over what's in the report  
17 to the Court, which we've also discussed through the status  
18 conference.

19 We continue to report a significant numbers of calls. As  
20 the Court knows, as a result of communications by attorneys with  
21 their clients telling them they're not going to assist them  
22 anymore, and what have you, and directing them to contact me.  
23 This has resulted in the significant out take of the  
24 communications. And we have done, as we have done with  
25 everyone, we have assisted them as best we can, and I feel that

1 it's continued to work well.

2 We have published some 200 ads in national newspapers and  
3 newspapers throughout the country. And currently we have 60  
4 additional legal notice publications that are schedule to run.  
5 We believe that those will all be completed by the end of this  
6 month, by the 31st of July. So we have moved from beginning  
7 towards the end there. And when we receive documentation from  
8 the pro se claimants, or potential pro se claimants, of course,  
9 we send them on to the claims administrator. And that has  
10 continued to work well.

11 I mean, I just got to say, I'm very impressed with Brown  
12 Greer and the quality of, not only the work that is being done  
13 there, but also the assistance that we've been getting in terms  
14 of role that the Court has asked us to play.

15 One of the Court's directed me as the curator to provide  
16 names of attorneys in the areas where the pro se plaintiffs are  
17 calling from, or communicating with us. We have done so when  
18 requested. And then, we finally come to the point that the  
19 Court on July 8th issued an order directing the parties to  
20 discuss and address an issue raised by a letter that the Court  
21 received from a Mr. Glenn Coldfield in Dunkinville, Texas, as we  
22 set forth in the curator's report. Well, basically Mr.  
23 Coldfield wants access to the portal. And we had a brief  
24 discussion with the Court in chambers before coming out here.

25 As curator, I suggest to the Court that it would be

1       inappropriate to do what Mr. Coldfield wants, which is to say --  
2       he says he wants access to information contained in the  
3       submission and claims review process. He's objecting to the  
4       fact that only attorneys and law firms representing clients and  
5       what have you have that access. This is probably more for Brown  
6       Greer, but the technical problems of doing that -- because there  
7       must be an assurance that there will be no potential for that  
8       individual, were he or she granted the right to access the  
9       portals, to get access to other claimants records or what have  
10      you, it would be very, very burdensome. And I think just from  
11      my rule, I think that's sufficient to simply bring that to the  
12      attention of the Court.

13             But, from the standpoint of me as the court-appointed  
14      curator for the pro se claimants, you know, our role is to  
15      essentially act as liaison, as well as direct communicators with  
16      those individuals on those lists. An we feel that we have done  
17      the job that the Court hired me, and the attorneys who are  
18      working me, with regard to assisting those individuals. We  
19      certainly of course have access to the claims administrator's  
20      portal. And when there are discussions with these pro se  
21      claimants, this is where we're getting our information. So,  
22      we're certainly a means by which we can assist those people  
23      without them having individual access to the portals.

24             And, finally, if you consider the parade of horrors,  
25      if these individuals were given access, certainly one could make

1 an argument that that has the potential for taking us out of the  
2 loop. And I don't believe that is what the Court has wanted  
3 when the Court appointed me as pro se plaintiff curator.

4 So, with that, I think that I've said all that needs to be  
5 said from my standpoint about the request by Mr. Coldfield, so  
6 that's basically it.

7 THE COURT: Okay, fine. I've considered that issue  
8 and I've considered it very carefully, not only because of Mr.  
9 Coldfield mentioning it, but even before that. The way that is  
10 essential to make the MDL move properly is through some  
11 organization and type organization. And it's essential that we  
12 keep these portals private. And the only way I can do that is  
13 to allow only attorneys to have access to it. I've created an  
14 attorney, or created the opportunity for anyone to have an  
15 attorney. Mr. Johnston has been appointed to represent the pro  
16 se individuals. He has access to the portal. If any individual  
17 needs access to the portal and they do not have an attorney,  
18 they can contact Mr. Johnston and get access to the portal  
19 through him. But, we can't have 100,000 individuals having  
20 access to the portal. It will be problematic from the  
21 standpoint of technology and also raise issues of privacy, which  
22 the Court would not be able to reach. So, I've considered that.  
23 I've treated it seriously, but for those reasons, I will not  
24 allow it.

25 MR. JOHNSTON: Well, thank you for that, Your Honor.

1 Russ Herman just came up and told me that either he or someone  
2 in his office had communicated with Mr. Coldfield, who  
3 apparently has the opportunity -- who was told he would have the  
4 opportunity to call in. I don't believe he particularly has  
5 done so.

6 THE COURT: Okay.

7 MR. JOHNSTON: Let me leave you with this. I want you  
8 to kind of get a flavor of the some of the circumstances and the  
9 role that of the attorneys and I who are curator have.

10 You know, when I got into this case, the settlement had  
11 already been accomplished and reached. And, certainly from my  
12 prospective I echo what the Court had said about the quality of  
13 the representation and professionalism, the lack of rank or what  
14 have you. The reason I say that is, I want you to know that the  
15 communications we've had from the pro se plaintiffs have for the  
16 most part involved communications with reasonable, generally  
17 reasonable individuals. As the Court might expect, we  
18 occasionally had unusual individuals, can I say? And I just  
19 thought the Court might have some interest in an example of  
20 that, which is that yesterday -- as the Court knows, my office  
21 is across the street in the Pan American Life Building -- and  
22 there was a bomb scare. And that cleared out 28 stories very  
23 fast. And we were out for a couple of hours. As I indicated,  
24 because we're getting lots of calls, there were several calls  
25 that came in and nobody was there to respond. And so when we

1 got back, of course doing the duty that we had as curators, we  
2 called these people up. And I don't know -- it probably is not  
3 at all relevant, the two calls I'm going to tell you about  
4 involves the individuals from California.

5 When we explained that the reason we weren't there when  
6 they called in because there was a bomb scare, we had two  
7 individuals -- I don't know if they know each other -- who  
8 concluded and wanted me to know that they knew the reason for  
9 it, which was because we are assisting the pro se plaintiffs.  
10 And so as officers of the court, of course, we certainly told  
11 them in very professional ways that they were erroneous, that  
12 our participation in the Vioxx settlement had nothing to do with  
13 the bomb situation. And just to tell it like it is, we told  
14 them that they were wrong. I will tell you that we will  
15 continue to give our best efforts to deal with all pro se  
16 claimants, both the usual and the usual.

17 THE COURT: Thank you.

18 MR. HERMAN: Your Honor, for the record, you might  
19 note that my classmate, Mr. Johnston, who studied a priori and  
20 post posteriori arguments --

21 MR. JOHNSTON: He didn't know what that meant in law  
22 school and he still doesn't.

23 MR. HERMAN: -- under the tutelage of Professor  
24 Mitchell Franklin, enables him erudite presentation.

25 MR. WITTMAN: I'm just he's got my reputation solid

1 with the pro se claimants.

2 THE COURT: He had nothing to do with the bomb  
3 scare.

4 MR. WITTMAN: Nothing at all, Judge.

5 Your Honor, we skipped around a bit, but I think the next  
6 issue relates to the Pretrial Order Number 9. Mr. Herman has  
7 been negotiation with the folks over in Texas. You have  
8 anything?

9 MR. HERMAN: Nothing.

10 MR. WITTMAN: Nothing. Then we have the Vioxx suit  
11 statistics of which we don't have any new statistics. We'll be  
12 filing a quarterly report next week and we'll do an update of  
13 the suits statistic at our next status conference.

14 The e next item is the MDL Trial Package. Any report on  
15 that Herman?

16 MR. HERMAN: Yes. Again, I want to thank Mr. Meunier  
17 and Rafferty's firm for their leadership in develop a trial  
18 package. We have had no request for the trial package since the  
19 last status conference We had have had no request to come to the  
20 depository. The last request we had was in February, and the  
21 individual that requested access was given multiple dates, and  
22 to date has not visited the depository. So, the package is  
23 there and individuals that comply with Court orders, both the  
24 package and the depository are available.

25 The next issue, Your Honor, would be the Third Party Payor

1 Cases. And I'd like to -- Mr. Seeger has got a very brief  
2 report to make.

3 MR. SEEGER: Good morning, Judge. Consistent with the  
4 comments you've made to the parties. I'm referring now to the  
5 Motions for Preliminary Injunction filed by Admen (phonetic) and  
6 others. We attempted to -- we entered into some discussions,  
7 again, consisted with your directives. Haven't made much  
8 progress, frankly, on it. I think we've got those motions back  
9 on the calendar for next week. That's really what we have.

10 THE COURT: Thank you.

11 MR. HERMAN: Your Honor, with respect to Forum Non  
12 Conveniens, after some meeting that went pretty late with the  
13 Plaintiff's Committee last night, I reviewed what had come in  
14 Mr. Silvaney (phonetic) from the Midoff (phonetic) firm and Mr.  
15 Cooper from the Erin M. Levin Firm. I sent emails regarding  
16 their potential appearance today on the Forum Non Conveniens  
17 motion.

18 THE COURT: We'll take that last because we have some  
19 people who will argue by phone, and we'll take a ten-minute  
20 break after this, and I'll hear their comments. So, lets go to  
21 Termination Tolling Agreements.

22 MR. WITTMAN: There is nothing new on that, Judge. On  
23 April 23rd Merck provided notice that pursuant to the terms of  
24 Totaling Agreements, they were terminating their agreement with  
25 respect to all claims. In fact, they have 120 days from April

1 23rd, which would put it around, I believe, August 22n.

2 The Third Party Payor Motions, Mr. Seeger just addressed  
3 that. Merck's Motion to Dismiss Cases of Non-Registrants was  
4 filed on May 29, 2008, and Merck has moved to continue the  
5 motion for the next monthly status conference that will be heard  
6 on August 22nd.

7 THE COURT: Yes, as I before, there are two  
8 significant periods. One is the period to register and the  
9 other is a period to enroll. A registration does not carry any  
10 obligation to enroll, it simply tells the world that you have a  
11 claim. It would seem to me that if you have a claim, you would  
12 want everyone to know that you have a claim. Because if no one  
13 knows it, or if you haven't made it, or if you've made it but  
14 it's fallen through the cracks, you need to enroll -- I mean,  
15 you need to register so that you're on the radar screen. You  
16 don't have to enroll once you register, but you need to  
17 register, and I expect them to register. If they do not  
18 register, then I'm going to have to take some action on it.

19 But, again, registration does not mean that you are willing  
20 to enroll, interested in enrolling, interested in participating  
21 in the program. It simply means that you're out there. And I  
22 think it's helpful to get in that number and give the parties  
23 that census so that the Court knows you're out there.

24 MR. WITTMAN: Your Honor, the final item is the 1199  
25 Greater New York Benefit Fund which filed a petition for

1 Declaratory and Equitable Relief on June 3, 2008. That petition  
2 has been amended. Parties have been in discussion. I  
3 understand it's set for hearing now on July 24. I don't have  
4 anything to report on that. Maybe Mr. Herman has something to  
5 that affect.

6 MR. HERMAN: I have nothing to add on that, Your  
7 Honor. However, with respect to Merck's Motion to Dismiss Cases  
8 of Non-registrants, Mr. Davis and Ms. Wimberly will be getting  
9 together to resolve some technical problems regarding the  
10 attorneys that need to be notified.

11 THE COURT: I think the way to handle that is for them  
12 to get together and talk about it and see what the problems are,  
13 and see if you can come up with some solutions to amend. I'll  
14 meet with you in a status conference and I'll discuss those with  
15 you and come up with a method of handling it.

16 Anything further?

17 MR. WITTMAN: That's it except for next status  
18 conference.

19 THE COURT: The next status conference is August 20th,  
20 8:30 with the committees and 9 o'clock in open court.

21 Okay, we'll take a ten-minute break here and then I'll come  
22 back and I'll hear the Motions for Non Conveniens. The Court is  
23 in recess.

24 THE DEPUTY CLERK: Everyone rise.

25 *(Off the record.)*

**REPORTER'S CERTIFICATE**

I, Pinkey Ferdinand, Official Court Reporter, United States District Court, Eastern District of Louisiana, do hereby certify that the foregoing is a true and correct transcript, to the best of my ability and understanding, from the record of the proceedings in the above-entitled and numbered matter.

S/PINKEY FERDINAND

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Pinkey Ferdinand,  
Official Court Reporter

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